

FILED
RECORDED
01 AUG -1 AM 11:22
LEGAL PROCESS #0

BILL LOCKYER, Attorney General
of the State of California
THEODORA BERGER
Senior Assistant Attorney General
G. LYNN THORPE
Deputy Attorney General
State Bar No. 112122
1300 I Street
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: 916-322-9226
Fax: 916-327-3219

TODD D. RIEBE
Amador District Attorney
STACEY GEIS
Special Deputy District Attorney
State Bar No. 181444
708 Court Street, Suite 202
Jackson, CA 95642-2130

Attorneys for Plaintiffs, People of the State of California

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

PEOPLE OF THE STATE OF CALIFORNIA, ex rel.
BILL LOCKYER, Attorney General; PEOPLE OF
THE STATE OF CALIFORNIA, ex rel. EDWIN F.
LOWRY, Director, STATE DEPARTMENT OF
TOXIC SUBSTANCES CONTROL,

Plaintiffs,

v.

K.R.L. PARTNERSHIP, a partnership; ROBERT R.
WOMACK, individually and as a partner or agent;
LARRY WOMACK, individually and as a partner;
ROLAND E. WOMACK, individually and as a
partner; NADINE L. WOMACK, individually and as a
partner; LUKE A. WOMACK, individually and as a
partner; KIMBERLY MOORE, individually and as a
partner; and DOES 1 THROUGH 10, inclusive;

Defendants.

Case No.:

01AS04631

**COMPLAINT FOR CIVIL
PENALTIES, INJUNCTION AND
OTHER RELIEF**

PLAINTIFFS, the PEOPLE OF THE STATE OF CALIFORNIA, ex rel. BILL

OFFICE COPY
ATTORNEY GENERAL

1 LOCKYER, ATTORNEY GENERAL and the PEOPLE OF THE STATE OF CALIFORNIA, ex
2 rel. EDWIN F. LOWRY, DIRECTOR, STATE DEPARTMENT OF TOXIC SUBSTANCES
3 CONTROL, allege as follows:

4 **GENERAL ALLEGATIONS**

5 1. This action is brought by the People of the State of California, by and through
6 Bill Lockyer, Attorney General for the State of California, and by and through Edwin F. Lowry,
7 director of the Department of Toxic Substances Control ("DTSC" or "Department"), to obtain
8 permanent injunctive relief and for civil penalties under the Hazardous Waste Control Law
9 ("HWCL"), chapter 6.5 of division 20 of the Health and Safety Code,^{1/} sections 25100 *et seq.* and
10 for civil penalties under chapter 6.7 of division 20 of the Health and Safety Code, sections 25280
11 *et seq.*

12 **PLAINTIFFS**

13 2. Bill Lockyer is the Attorney General for the State of California. Pursuant to
14 section 25299.02 of the Health and Safety Code, the Attorney General of the State of California
15 is authorized to commence an action for civil penalties in the name of the People of the State of
16 California for violations of the underground storage tank laws and regulations set forth in chapter
17 6.7 of division 20 of the Health and Safety Code, sections 25280 *et seq.* Pursuant to section
18 25182 of the Health and Safety Code, the Attorney General of the State of California is
19 authorized to a civil action in the name of the People of the State of California for violations of
20 the HWCL.

21 3. Edwin F. Lowry is the Director of the Department. The Department is a public
22 agency of the State of California organized and existing under and pursuant to sections 58000 *et*
23 *seq.* of the California Health and Safety Code. The Department is the state agency responsible
24 for the administration of the HWCL. Under section 25182, the Attorney General is authorized to
25 commence an action under the HWCL in the name of the People of the State of California at the
26 request of the Department.

27
28 1. Unless otherwise noted, all statutory references are to the California Health and Safety
Code.

DEFENDANTS

4. Plaintiffs are informed and believe and on that basis allege that defendant K.R.L. Partnership ("KRL") is, and at all times relevant herein was, a California General Partnership, organized and existing under the laws of the State of California, with its principal place of business at 15864 Ridge Road, Sutter Creek, California.

5. Plaintiffs are informed and believe and on that basis allege that defendant KRL acted at all relevant times herein as the owner and/or operator of an underground storage tank which was unlawfully removed on or around May 2, 1998 from property located at 505 Sutter Street, Jackson, California ("505 Sutter Street property"), and transported to a facility not permitted to accept hazardous waste for storage or disposal purposes; specifically, 14385 Highway 88, Jackson, California (known as "Highway 88 property"), as those terms are defined in the Health and Safety Code and the regulations promulgated thereunder.

6. Plaintiffs are informed and believe and on that basis allege that defendant KRL is the owner of property located at 17560 Bosse Road in Jackson, California (known as the "Bosse Ranch") which is, and at all times relevant herein was, a facility not permitted or granted other authorization to accept hazardous waste for storage, treatment or disposal purposes, as those terms are defined in the Health and Safety Code and the regulations promulgated thereunder.

7. Plaintiffs are informed and believe and on that basis allege that defendant Robert R. Womack ("Robert Womack") is, and at all times relevant herein was, a partner and/or agent of KRL, and is, and at all times relevant herein was, responsible for the day-to-day activities and management of KRL. Plaintiffs allege on information and belief that Robert Womack, at all times relevant herein, had authority to make decisions for KRL and did make decisions for KRL with respect to the unlawful removal of an underground storage tank at 505 Sutter Street property and the unlawful disposal, transportation and/or storage of hazardous waste at 505 Sutter Street property and the Bosse Ranch. Plaintiffs further allege upon information and belief that Robert Womack caused the disposal and/or directed the disposal of hazardous waste from 505 Sutter Street property to the Highway 88 property. Plaintiffs further allege upon

1 information and belief that Robert Womack caused the disposal and/or directed the disposal of
2 hazardous waste at the Bosse Ranch. Robert Womack is sued both in his individual capacity and
3 as a partner or agent of KRL.

4 8. Plaintiffs are informed and believe and on that basis allege that defendant
5 Larry Womack ("Larry Womack"), is and at all times relevant herein, was a partner in KRL.
6 Larry Womack is sued both in his individual capacity and as a member of the partnership.

7 9. Plaintiffs are informed and believe and on that basis allege that defendant
8 Roland E. Womack ("Roland Womack"), is and at all times relevant herein, was a partner in
9 KRL. Plaintiffs further allege that Roland Womack was the owner and/or operator of the
10 underground storage tank located at 505 Sutter Street property, which was unlawfully removed
11 on or around May 2, 1998. Roland Womack is sued both in his individual capacity and as a
12 member of the partnership.

13 10. Plaintiffs are informed and believe and on that basis allege that defendant
14 Nadine L. Womack ("Nadine Womack"), is and at all times relevant herein, was a partner in
15 KRL. Plaintiffs further allege that Nadine Womack was an owner and/or operator of the
16 underground storage tank located at 505 Sutter Street property which was unlawfully removed on
17 or around May 2, 1998. Nadine Womack is sued both in her individual capacity and as a
18 member of the partnership.

19 11. Plaintiffs are informed and believe and on that basis allege that defendant
20 Luke A. Womack ("Luke Womack"), is and at all times relevant herein was, a partner in KRL.
21 Luke Womack is sued both in his individual capacity and as a member of the partnership.

22 12. Plaintiffs are informed and believe and on that basis allege that defendant
23 Kimberly Moore, is and at all times relevant herein was, a partner in KRL. Kimberly Moore is
24 sued both in her individual capacity and as a member of the partnership.

25 13. Plaintiffs are informed and believe and on that basis allege that, at all relevant
26 times, each defendant was and is a "person" within the meaning of Health and Safety Code
27 sections 25118 and 25281.

28 ///

1 14. In this complaint, when reference is made to any act of defendant KRL, such
2 allegations shall mean that the owners, officers, directors, agents, employees or representatives of
3 defendant KRL did, or authorized, such acts, or negligently failed and omitted adequately or
4 properly to supervise, control or direct its employees, representatives or agents while engaged in
5 the management, direction, operation or control of the affairs of the business organization and
6 did so while acting within the course and scope of its employment or agency. Whenever in this
7 complaint reference is made to any of the defendants or to any act of defendants, such allegation
8 shall be deemed to mean the act of each defendant acting individually, jointly, and severally.

9 15. The true names and capacities of those defendants identified as DOES 1
10 through 10, inclusive, are unknown to plaintiffs, who therefore sues these defendants under
11 fictitious names. When the true names of these defendants have been ascertained, plaintiffs will
12 seek leave of court to amend this complaint to substitute the true names for the fictitious names.

13 STATEMENT OF THE ACTION

14 16. The Attorney General in the name of the People of the State of California
15 seeks relief against all defendants pursuant to Health and Safety Code sections 25280, *et seq.* and
16 25100, *et seq.*; specifically, civil penalties from each of the defendants pursuant to section 25299
17 for violations involving an underground storage tank and pursuant to section 25189, or
18 alternatively under section 25189.2, for violations involving the disposal, transportation and
19 storage of hazardous waste.

20 17. The Department in the name of the People of the State of California seeks
21 relief against all defendants under the HWCL, Health and Safety Code sections 25100 *et seq.*;
22 specifically, injunctive relief pursuant to section 25181 in the form of an order directing
23 compliance with the HWCL, and civil penalties from each of the defendants, pursuant to section
24 25189 of the Health and Safety Code, or alternatively under section 25189.2, for violations of the
25 HWCL.

26 JURISDICTION AND VENUE

27 18. The Attorney General may commence a civil action involving violations of
28 chapter 6.7 of division 20 of the Health and Safety Code, sections 25280 *et seq.*, pursuant to

1 section 25299.02, and may commence a civil action involving violations of chapter 6.5 of
2 division 20 of the Health and Safety Code, sections 25100 *et seq*, pursuant to section 25182.

3 19. The Department has requested the Attorney General to commence the fourth,
4 fifth and sixth causes of action of this civil action pursuant to Health and Safety Code section
5 25182. Section 25181 authorizes the Attorney General, at the request of the Department, to
6 apply to the Superior Court for an injunction or other order in the event of a violation of the
7 HWCL. Sections 25189 and 25189.2 authorize a civil action for penalties for violations of the
8 HWCL or any permit, rule, regulation, standard or requirement issued or adopted pursuant to the
9 HWCL, and for disposing or causing the disposal of any hazardous waste at a point which is not
10 authorized by the HWCL.

11 20. Venue is proper in Sacramento County under sections 25299.03 and 25183 as
12 the Attorney General's office in Sacramento County is the office nearest to the county, Amador
13 County, in which the principal office of the defendants is located.

14 21. The amount in controversy in this action is greater than \$25,000.

15 **STATUTORY AND REGULATORY BACKGROUND**

16 **UNDERGROUND STORAGE TANK LAWS AND REGULATIONS**

17 22. Pursuant to Health and Safety Code section 25284, it is unlawful to own or
18 operate an underground storage tank unless a permit has been issued by the local agency.

19 23. No person shall close an underground storage tank without complying with
20 the provisions of Health and Safety Code section 25298(c).

21 24. Under Health and Safety Code section 25299(b), an owner of an underground
22 storage tank who fails to obtain a closure permit, or abandons or improperly closes an
23 underground tank system is liable for a civil penalty of not more than five thousand dollars
24 (\$5,000) for each day of each violation.

25 25. Under Health and Safety Code section 25299(c), "[a]ny person who
26 intentionally fails to notify the board or the local agency when required to do so ... is liable for a
27 civil penalty of not more than five thousand dollars (\$5,000) for each underground storage tank
28 for which notification is not given. . . ."

HAZARDOUS WASTE LAWS AND REGULATIONS

26. The State of California has enacted a comprehensive statutory and regulatory framework for the handling, treatment, transport and disposal of hazardous wastes for the protection of the public from the risks posed by hazardous wastes. Regulations promulgated by the Department in the California Code of Regulations, title 22, division 4.5, implement the HWCL.

27. Absent statutory or regulatory exemption, it is illegal to treat, store, dispose and/or transport hazardous wastes without a Hazardous Waste Facility Permit or an Interim Status Document from the Department. Under the HWCL, a "hazardous waste facility" is defined as "all land and structures . . . used for the treatment, transfer, storage. . . [or] disposal . . . of hazardous waste." (Health & Saf. Code, § 25117.1.) "Hazardous waste facility" and "facility" are synonymous terms. (22 C.C.R. § 66260.10.) The HWCL provides:

[N]o owner or operator of a storage facility, treatment facility, transfer facility, resource recovery facility, or disposal site shall accept, treat, store, or dispose of a hazardous waste at the facility, area, or site, unless the owner or operator holds a hazardous waste facilities permit or other grant of authorization from the department . . .

(Id. at § 25201(a).) In addition, section 25189.5 (a) of the Health and Safety Code provides:

The disposal of any hazardous waste, or the causing thereof, is prohibited when the disposal is at a facility which does not have a permit from the department issued pursuant to this chapter, or at any point which is not authorized according to this chapter.

(Id. at § 25189.5(a).)

28. Section 25189 (b) of the Health and Safety Code provides that any person who intentionally or negligently violates any provision of the HWCL, or any regulation promulgated thereunder, shall be liable for a civil penalty not to exceed \$25,000 for each violation of a separate provision, or for continuing violations, for each day that the violation continues. Section 25189(b) covers violations other than those covered by sections 25189(c) and 25189(d).

29. Under sections 25189(c) of the Health and Safety Code, any person who intentionally disposes or causes the disposal of any hazardous waste, and under section 25189(d),

1 any person negligently disposes or causes the disposal of hazardous waste, at a point not
2 authorized by chapter 6.5 of division 20 of the Health and Safety Code, shall be liable for a civil
3 penalty of not more than \$25,000 for each violation. Sections 25189(c) and (d) provide that each
4 day on which an unauthorized deposit of hazardous waste remains is a separate violation unless
5 the person files a report with the Department and complies with an order for cleanup issued by
6 the director or a court of competent jurisdiction.

7 30. As an alternative to the civil penalty remedies set forth in section 25189 of
8 the Health and Safety Code for intentional and negligent conduct, section 25189.2 of the Health
9 and Safety Code provides a civil penalty remedy with a strict liability standard. Section
10 25189.2(b) provides a strict liability standard of liability for any violation of the HWCL, except
11 for disposal violations, and section 25189.2(c) provides a strict liability standard of liability for
12 disposing, or causing the disposal of, any hazardous or extremely hazardous waste at an
13 unauthorized point. Section 25189.2 (c) provides that each day on which an unauthorized
14 deposit of hazardous waste remains is a separate violation unless the person files a report with
15 the Department and complies with an order for cleanup issued by the director or a court of
16 competent jurisdiction. Civil penalties up to \$25,000 may be assessed for each separate violation
17 and for each violation of a separate provision, or for continuing violations, for each day that the
18 violation continues. No person may be liable for a civil penalty under both section 25189 and
19 section 25189.2 for the same act, pursuant to section 25189.2(d).

20 31. Section 25160(b) provides that it is unlawful for any person that generates
21 hazardous waste which is transported for offsite handling, treatment, storage, disposal, or any
22 combination thereof shall submit a hazardous waste manifest to the person who will transport the
23 hazardous waste.

24 32. Section 25201(a) provides that it is unlawful for an owner or operator of a
25 storage facility, treatment facility, waste transfer station, resource recovery facility, or disposal
26 site shall accept, treat, store or dispose of a hazardous waste at the facility, station, area, or site,
27 unless the owner or operator holds a hazardous waste facilities permit or other grant of
28 authorization from the Department to sue and operate the facility, station, area, or site.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

16
17
18
19
20
21
22
23
24
25
26
27
28

19
20
21
22
23
24
25
26
27
28

22
23
24
25
26
27
28

24
25
26
27
28

27

28

1 county, which here was the Amador County Department of Environmental Health (the
2 "Environmental Health Department").

3 42. Plaintiffs allege that the defendants, collectively or individually, never
4 applied for or otherwise received a UST permit allowing for the removal of the UST at issue.

5 43. Plaintiffs allege that because the defendants did not obtain a permit, several
6 health and safety precautions were not observed. In particular, the UST at issue was not made
7 inert with dry ice to prevent explosions; the contaminated soil and nearby groundwater were not
8 properly handled, treated, transported or stored; a safety barricade was not installed to protect
9 pedestrians and children from a nearby school from falling into the excavated pit; none of the
10 persons directly participating in the removal of the UST at issue had the required 40 hour
11 HazMat training; hard hats; moreover, other OSHA precautions, such as no smoking, were not
12 observed. In addition, as otherwise required by law, a County inspector from the Environmental
13 Health Department was not present to ensure that the aforementioned safety precautions were
14 followed and followed in a proper manner to ensure the safety of those persons involved with the
15 removal as well as the general public.

16 44. Plaintiffs allege that a UST that has not been filled with inert material and/or
17 otherwise properly cleaned prior to removal is a serious hazard to human health and the
18 environment. There have been numerous reports of USTs not properly cleaned exploding in
19 transit or while in storage; causing fatalities or serious bodily injury. Moreover, an improperly
20 cleaned UST can contaminate surface or ground water. An improperly cleaned UST can also be
21 inappropriately used for storage (i.e., to store water or other products for future consumption),
22 which can result in injury to persons or animals.

23 45. Plaintiffs allege that, once the regulatory and enforcement agencies learned of
24 the unlawful removal of the UST at issue, the agencies undertook serious efforts for several
25 months to locate the UST at issue. At some point, certain defendants, including Robert Womack,
26 were contacted to ascertain the whereabouts of the UST at issue in an effort to minimize the
27 UST's potential threat to human health or the environment.

28 ///

1 46. Plaintiffs allege that Robert Womack provided false information to regulatory
2 and enforcement agencies regarding the whereabouts of the UST. Robert Womack also directed
3 other persons to provide false information to regulatory and enforcement agencies regarding the
4 whereabouts of the UST at issue.

5 47. Plaintiffs allege that on or around September 8, 1998, the UST at issue was
6 discovered at Thorpe Oil, in Lodi, California. Thorpe Oil was a hazardous waste facility that was
7 permitted to store hazardous waste. Richard Thorpe, the owner of Thorpe Oil, was allegedly
8 unable to identify the individual or the vehicle used to transport the UST to Lodi. He was also
9 unable to present any manifests demonstrating that the UST at issue was lawfully transported to
10 Thorpe Oil by a person registered to haul hazardous waste. However, Mr. Thorpe did present to
11 enforcement personnel a check for \$1,017.50 written on a KRL Partnership account that was
12 signed by "R. Womack." The UST was subsequently destroyed.

13 UNLAWFUL DISPOSAL OF HAZARDOUS WASTE
14 AT THE BOSSE RANCH

15 48. Plaintiffs allege that at all relevant times, the defendants owned and/or
16 operated property located at 17560 Bosse Road in Jackson, California (hereinafter referred to as
17 the "Bosse Ranch").

18 49. Plaintiffs allege that at all relevant times, each defendant, both collectively
19 and individually, was and is a "person" within the meaning of section 25118 of the Health and
20 Safety Code.

21 50. Plaintiffs allege that at all relevant times, the Bosse Ranch property was and
22 is a "disposal site", and a "hazardous waste facility" or "facility" within the meaning of the
23 HWCL.

24 51. Plaintiffs allege that at all relevant times, none of the defendants possessed a
25 hazardous waste treatment, storage or disposal permit or other grant of authorization issued by
26 the Department to dispose of or store hazardous waste at the Bosse Ranch property.

27 52. Plaintiffs allege that at all relevant times, defendants disposed or caused the
28 disposal of hazardous wastes and hazardous substances at the Bosse Ranch property.

1 53. On or about January 21, 1999, the Amador County District Attorney, by
2 affidavit made by Russell Moore, investigator for the Environmental Crimes Unit of the
3 California Highway Patrol, secured a warrant to search the Bosse Ranch property for, among
4 other things, any buried hazardous waste.

5 54. On or about January 26, 1999, and January 27, 1999, the search warrant was
6 served and executed. The Department, with the Amador County District Attorney's Office,
7 collected samples at the Bosse Ranch for chemical analysis. In addition, a number of items,
8 including but not limited to damaged lead-acid automotive batteries, used oil filters, a used
9 automobile catalytic converter, asbestos containing debris, and various partially-filled containers,
10 were discovered to have been buried in the soil of the Bosse Ranch property. The Amador
11 County District Attorney's Office seized some of these items.

12 55. After preparing a Sampling Report dated May 17, 1999 documenting the
13 result of the chemical analysis on the samples obtained, the Department determined that the
14 defendants had violated the HWCL and its implementing regulations by disposing of used oil,
15 spent lead-acid batteries, and hazardous wastes, including but not limited to zinc, lead, asbestos,
16 and a used catalytic converter at the Bosse Ranch site without a hazardous waste facilities permit
17 or any other grant of authorization from the Department.

18 56. On or about June 1, 1999, some or all of the defendants were informed by the
19 Amador County District Attorney's Office that statutory violations had occurred at the Bosse
20 Ranch property. Plaintiffs allege that defendants have not taken steps to bring the Bosse Ranch
21 property into compliance with the HWCL and its implementing regulations.

22 57. Plaintiffs allege that the Bosse Ranch site posed, and continues to pose, a
23 threat to public health and the environment. Hazardous materials and hazardous wastes have
24 been improperly disposed of and continue to exist at this site. Under sections 25189 and
25 25189.2, each day on which the hazardous materials and wastes exist on the site is a separate
26 additional violation.

27 ///

28 ///

1 **FIRST CAUSE OF ACTION**

2 (Unlawful Removal of an Underground Storage Tank from 505 Sutter)

3 58. Plaintiffs reallege and incorporates herein as though fully set forth Paragraphs
4 1 through 57 of this Complaint.

5 59. Plaintiffs allege that beginning on or around May 2, 1998, which is within
6 five (5) years (C.P. §338.1) prior to the filing of this complaint, defendants removed or caused
7 the removal of an underground storage tank located at 505 Sutter Street, without having obtained
8 the proper permit required under the HWCL, thereby violating section 25299 of chapter 6.7 of
9 the Health and Safety Code, including but not limited to: (1) Abandonment or improper closure
10 of any underground tank system subject to this chapter (section 25299(b)(3)); (2) Failure to
11 comply with all of the applicable requirements to maintain the UST permit (section 25299(b)(5));
12 (3) Failure to take reasonable and necessary steps to assure compliance with the applicable
13 statutes and regulations for Underground Storage Tanks in violation of Health and Safety Code
14 (sections 25299(a)(6) and (b)(6)); and, (4) Failure to properly monitor, timely report and/or test
15 underground tanks in violation of section 25299(b)(7) and section 2646.1 of title 23 of the
16 California Code of Regulations.

17 60. Defendants are liable for civil penalties according to proof, pursuant to
18 section 25299, for each day of violation.

19 **SECOND CAUSE OF ACTION**

20 (Illegal Disposal of Hazardous Waste from 505 Sutter Street)

21 61. Plaintiffs reallege and incorporates herein as though fully set forth Paragraphs
22 1 through 57 of this Complaint.

23 62. Plaintiffs allege that on or around May 5, 1998, which is within five years of
24 the filing of this complaint, and continuing to a date unknown, defendants disposed of a
25 hazardous waste consisting of an underground storage tank and its associated contents on the 88
26 Highway property and/or an unknown location without first obtaining a hazardous waste
27 facilities permit or other grant of authorization from the Department to use the site for hazardous
28 waste disposal, thereby violating sections 25201.

63. Each and every violation set forth in this cause of action constitutes a negligent or intentional act in violation of the Health and Safety Code or of the Department's regulations, for which each defendant is subject to civil penalties up to \$25,000 per day for each violation pursuant to section 25189(b) of the Health and Safety Code; or, alternatively, constitutes a non-negligent and non-intentional violation, for which defendants are subject to civil penalties of up to \$25,000 per day for each violation pursuant to 25189.2(b) of the Health and Safety Code; for which defendants are liable according to proof.

THIRD CAUSE OF ACTION

(Other Violations of the HWCL -- 505 Sutter Street)

64. Plaintiffs reallege and incorporates herein as though fully set forth Paragraphs 1 through 57 of this Complaint.

65. Plaintiffs allege that on or around May 5, 1998, which is within five years of the filing of this complaint, and continuing to a date unknown, defendants intentionally, negligently, and/or under strict liability violated provisions of the HWCL in violation of 25189(b) and 25189.2(b) as follows:

a) Defendants transported hazardous waste, consisting of an underground storage tank and its associated contents from the 505 Sutter property to the 88 Highway property and/or an unknown location that did not have a permit from the Department to store hazardous waste in violation of 25201(a).

b) Defendants transported hazardous waste, consisting of an underground storage tank and its associated contents without proper registration to haul hazardous waste in violation of 25163(a).

c) Defendants transported or caused the transportation of hazardous waste, consisting of an underground storage tank and its associated contents without the proper manifest in the vehicle in violation of 25160(b) and/or 25160(d).

///

///

///

1 d) Defendants stored hazardous waste, consisting of an underground storage
2 tank and its associated contents without first obtaining a hazardous waste facilities permit or
3 other grant of authorization from the Department to use the site for the storage of hazardous
4 waste in violation of 25189.5(d).

5 66. Each and every violation set forth in this cause of action constitutes a
6 negligent or intentional act in violation of the Health and Safety Code or of the Department's
7 regulations, for which each defendant is subject to civil penalties up to \$25,000 per day for each
8 violation pursuant to section 25189(b) of the Health and Safety Code; or, alternatively,
9 constitutes a non-negligent and non-intentional violation, for which defendants are subject to
10 civil penalties of up to \$25,000 per day for each violation pursuant to 25189.2(b) of the Health
11 and Safety Code; for which defendants are liable according to proof.

12 **FOURTH CAUSE OF ACTION**

13 (Unlawful Disposal of Hazardous Waste at Bosse Ranch)

14 67. Plaintiffs reallege as if fully set forth herein paragraphs 1 through 57,
15 inclusive.

16 68. Plaintiffs allege that on or around January 26 and 27, 1999, which is within
17 five years prior to the filing of this complaint, the Department discovered that defendants buried,
18 burned or otherwise disposed of lead-containing wastes, a drum containing zinc, used automobile
19 and equipment batteries, containers of used motor oil and other waste automotive fluids, used
20 building materials and other debris containing asbestos, a used catalytic converter and other used
21 automobile parts in or on at least two locations on the Bosse Ranch property, without first
22 obtaining a hazardous waste facilities permit or other grant of authorization from the Department
23 to use the site for hazardous waste disposal, thereby violating sections 25201, 25198(c) and
24 25189.2(c) of the Health and Safety Code. Plaintiffs allege that the disposal of hazardous wastes
25 on the Bosse Ranch property has continued each day to the present date.

26 69. Each and every violation set forth in this cause of action constitutes a
27 negligent or intentional act in violation of the Health and Safety Code or of the Department's
28 regulations, for which each defendant is subject to civil penalties up to \$25,000 per day for each

1 violation pursuant to section 25189(c) or 25189(d) of the Health and Safety Code; or,
2 alternatively, constitutes a non-negligent and non-intentional violation, for which defendants are
3 subject to civil penalties of up to \$25,000 per day for each violation pursuant to 25189.2(c) of the
4 Health and Safety Code; for which defendants are liable according to proof.

5 **FIFTH CAUSE OF ACTION**

6 (Other Violations of the HWCL at Bosse Ranch: Improper Disposal of
7 Used Oil and Spent Lead-Acid Storage Batteries)

8 70. Plaintiffs reallege as if fully set forth herein paragraphs 1 through 57,
9 inclusive.

10 71. Plaintiffs allege that on or around January 26 and 27, 1999, which is within
11 five years prior to the filing of this complaint, the Department discovered that defendants
12 violated the HWCL in violation of 25189(b) and 25189.2(b) as set forth in subparagraphs (a) and
13 (b) below. Plaintiffs allege that these violations have continued each day to the present date.

14 a) Defendants disposed of used motor oil in or on at least two locations on the
15 Bosse Ranch property by incineration or burning as fuel or by deposit on land, thereby violating
16 section 25250.5 of the Health and Safety Code.

17 b) Defendants managed spent lead-acid storage batteries in a manner that
18 failed to comply with the requirements of the HWCL pertaining to the management of a
19 hazardous waste, thereby violating California Code of Regulations, title 22, sections 66266.80
20 and 66266.81.

21 72. Each and every violation set forth in this cause of action constitutes a
22 negligent or intentional act in violation of the Health and Safety Code or of the Department's
23 regulations, for which each defendant is subject to civil penalties up to \$25,000 per day for each
24 violation pursuant to section 25189(b) of the Health and Safety Code; or, alternatively,
25 constitutes a non-negligent and non-intentional violation, for which defendants are subject to
26 civil penalties of up to \$25,000 per day for each violation pursuant to 25189.2(b) of the Health
27 and Safety Code; for which defendants are liable according to proof.

28 ///

1 **SIXTH CAUSE OF ACTION**

2 (Injunctive Relief -- Bosse Ranch)

3 73. Plaintiffs reallege as if fully set forth herein paragraphs 1 through 57,
4 inclusive.

5 74. The Department contends that defendants have engaged and will continue to
6 engage, unless enjoined by this court, in acts that violate the HWCL and title 22 of the California
7 Code of Regulations.

8 75. Under Health and Safety Code section 25184, it is not necessary to allege or
9 prove that irreparable damage will occur should injunctive relief not be granted, or that the
10 remedy at law is inadequate.

11 76. Plaintiffs are entitled to permanent injunctive relief under Health and Safety
12 Code section 25181 against defendants, enjoining them from disposing of hazardous waste and
13 from operating and maintaining the Bosse Ranch property in a manner that violates the HWCL
14 and the regulations promulgated under the HWCL; and ordering them to remedy any remaining
15 hazardous waste contamination caused by the illegal disposal of hazardous wastes at the Bosse
16 Ranch property.

17 **PRAYER**

18 WHEREFORE, Plaintiffs pray that this Court:

19 1. Grant civil penalties of not less than FIVE THOUSAND DOLLARS
20 (\$5,000.00) per day for each UST for violation of Health and Safety Code chapter 6.7 pursuant to
21 Health and Safety Code § 25299, in an amount according to proof.

22 2. Grant civil penalties of not less than TWENTY-FIVE THOUSAND DOLLARS
23 (\$25,000.00) per day for each violation of the HWCL pursuant to sections 25189(b), 25189(c) and
24 25189(d), or, in the alternative, sections 25189.2(b) and 25189.2(c), in an amount according to
25 proof.

26 3. Grant the plaintiffs their costs of investigation and suit.

27 4. Grant the plaintiffs permanent injunctive relief under the Sixth Cause of Action.

28 ///

1 5. Grant other and further relief as the nature of the case may require and that the
2 Court deems just and proper.

3 Dated: 8/1/01

4 Respectfully Submitted,

5 BILL LOCKYER, Attorney
6 General of the State of California
7 THEODORA BERGER,
8 Senior Assistant Attorney General
9 G. LYNN THORPE
10 Deputy Attorney General

11 By

12 
13 G. LYNN THORPE
14 Deputy Attorney General

15 Attorneys for Plaintiffs
16
17
18
19
20
21
22
23
24
25
26
27
28